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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

CROSSLAND et al

Atty. Ref.: 124-930

Serial No. 10/084,652

Group:

Filed: February 28, 2002

Examiner:

For: SPACERS FOR CELLS HAVING SPACED OPPOSED SUBSTRATES

* * * * *

October 1, 2002

Assistant Commissioner for Patents
Washington, DC 20231

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Sir:

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SUPPLEMENTAL INFORMATION

This Information is responsive to the decision mailed September 12, 2002 (Paper No. 6) dismissing the previously filed petition. In reviewing the decision, the PTO has stated that "the declaration fails to indicate what efforts have been made to locate the non-signing inventor." This conclusion is respectfully traversed.

In the Declaration accompanying the Petition, the declarant provided evidence of facts (as stated in paragraph 5 of the Declaration) that (1) identified the last known address of the non-signing coinventor; (2) a letter was sent to the non-signing inventor at the last known address; and (3) no response to that letter has been received as of the signature date on the Declaration. Applicant believes these sworn statements comprise sufficient facts to establish the required "diligent effort." Neither the rule (37 C.F.R. §1.47(a) nor the MPEP appear to set a level of "effort" above and beyond those efforts

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which are of record in this matter. Therefore, clarification is requested as to how or where the PTO has a basis for requiring a further level of diligent effort above and beyond the facts of establishing the last known address, the mailing of a copy of the application and certification of no response.

Notwithstanding the above, a telephone interview was had with Alesia Brown who signed the dismissal, but she was unable or unwilling to provide any basis for the requirement set out in the dismissal. She did provide the name of her supervisor, Ms. Beverly Flanagan. A message to Ms. Flanagan's office resulted in John Gillon, Esq. returning the call. Mr. Gillon pointed out that the basis for the requirement to "indicate what efforts" is in Rule 47(a) as noted above, i.e., facts establishing that there were "diligent efforts" made. While, Mr. Gillon spent substantial time discussing the matter with the undersigned, it appears that there is no answer to the question of why the evidence set out in the declaration does not meet the PTO's standard of "diligent efforts" or even what that standard might be. Mr. Gillon's time spent in attempting to rationalize the PTO position is very much appreciated and he did indicate a way forward in this matter.

Attached hereto is an excerpt from an e-mail by Linda Bruckshaw, an administrative assistant to the Intellectual Property Manager of Qinetiq Limited, the assignee of the rights of the signing co-inventor. This elaborates upon the additional efforts taken by Ms. Bruckshaw in attempting to locate the non-signing co-inventor. After reading this excerpt to Mr. Gillon, Mr. Gillon indicated that these efforts were more

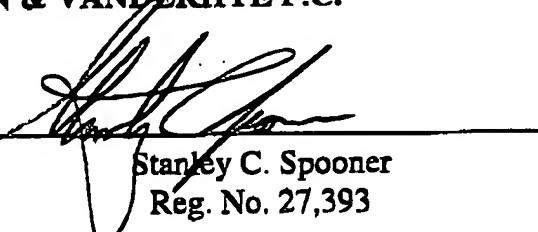
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than ample evidence of "diligent efforts" (whatever that standard might be) and that merely faxing that excerpt would be sufficient to reverse the decision on the petition.

Having responded to all issues raised in the Notice to File Missing Parts and having satisfied the requirements of Rule 47(a), it is respectfully requested that claims 1-34 be allowed and notice to that effect is respectfully requested. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of these claims, he is respectfully requested to contact applicants' undersigned representative.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 

Stanley C. Spooner
Reg. No. 27,393

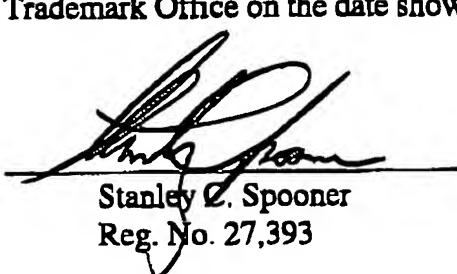
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Attachments:

Excerpt from L. Bruckshaw e-mail

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.


Stanley C. Spooner
Reg. No. 27,393

10/1/02
Date

Extract from Linda's email;

On the several occasion I contacted Cambridge University the University development office the information I received is

Tat Chiba Yu Left ROBINSON COLLEGE in 1990

Left Churchill in 1994

and he was no longer at the university

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I rang both the colleges in September and October to check there records on his where about they both came back back with no forwarding address

A set of forms was sent to the Cambridge but nothing ever came back it was several months before I chased it up

Phoned Professor Crossland office and his PA's have checked all his records they only have on record he attended the engineering department, no further information

all the assignments and declaration have been signed by ready to be sent to Clint

I don't know if is worth it but the conversation I have had with the university records department that this is the norm for Chinese students it not un common for them to leave no address